

Voluntary Arbitration Program Guide



*ar·bi·tra·tion n. 1. the process
by which the parties to a
dispute submit their differences
to the judgment of an
impartial party appointed
by statutory provision*

Introduction

Many disputes between consumers and contractors can be resolved efficiently and satisfactorily through arbitration. Arbitration is usually defined as an informal process in which two or more persons agree to let an impartial third person or panel make a final decision in a dispute between them. Because of the many advantages arbitration can offer, the Contractors State License Board (CSLB) offers arbitration for the resolution of disputes that meet certain criteria. The CSLB will pay for the hearing, the arbitrator, and the services of one board-appointed expert witness per complaint. Only contractors with good records qualify for participation in arbitration. Complaints involving deceptive or fraudulent practices will continue to be investigated by the CSLB.

Criteria



For a case to qualify for voluntary arbitration under Business and Professions Code Section 7085 *et seq*:

- (1) the dispute must involve present or future damages of between \$5,000 and \$50,000;
- (2) the contractor possesses a license that is in good standing;
- (3) the contractor must not have a record of prior violations;
- (4) the contractor does not currently have a disciplinary action pending against him or her; and
- (4) the parties must not have previously agreed to private arbitration of the dispute, either in their contract or otherwise.

The complaint must be filed within four or ten years after the alleged wrongful act or omission causing the dispute occurred, or within the duration of any written warranty for which breach is alleged. The four year time period applies to disputes involving **patent** defects and the ten year time period applies to disputes involving **latent** defects (Business and Professions Code Section 7091).

Voluntary and binding arbitration

“Voluntary” and “binding” are key terms to understand before entering into arbitration. Participation in this program is voluntary for both parties; if either party chooses not to participate, the dispute in question will not be arbitrated but will instead be investigated by the Contractors State License Board.

If both parties agree to arbitration, however, then they will be agreeing to **binding** arbitration. In other words, both the consumer and contractor must comply with the decision of the arbitrator. In binding arbitration, parties who refuse to comply may be taken to court and have a judgment entered against them. In addition, licensed contractors who fail to comply with an award that is issued against them may have their licenses suspended or revoked.

This brochure provides the information necessary to understand the CSLB Arbitration Program for the resolution of complaints in which the damages are between \$5,000 and \$50,000.

The CSLB Arbitration Program

An arbitration firm has been selected to arbitrate construction disputes for the CSLB. The arbitration firm has expert arbitrators throughout California who have been trained to resolve consumer/contractor disputes. All have undergone intensive training to ensure that both parties receive a fair hearing. The arbitration firm will contact you after the CSLB asks that your dispute be scheduled for a hearing.

How to obtain arbitration services



Parties to a construction contract should consider arbitration when communications have broken down, the consumer has filed a complaint with the CSLB, and the board has determined that the dispute could be effectively handled through arbitration.

Once both parties agree to arbitration, and a representative of the board determines that a complaint qualifies for arbitration, the representative will send an *Agreement to Arbitrate* form to the consumer and the contractor. The respective parties will fill in their names, addresses, and outline the claims and relief they are seeking. When completed and signed, the form is to be returned to the CSLB.

The CSLB will send copies of the signed *Agreement to Arbitrate* form to the other party so that both of them will know exactly what issues are in dispute and what remedies are being sought. Both parties can then prepare their cases for presentation at the arbitration hearing. A copy of the signed *Agreement to Arbitrate* form will also be sent to the arbitration firm selected to handle the case.

Scheduling the hearing

When the arbitration firm receives a signed *Agreement to Arbitrate* form, it will prepare a candidate list of arbitrators to conduct the hearing. Each party may strike any unacceptable arbitrator from the list and rank the remaining in preferential order. If possible the arbitration association then appoints a mutually acceptable arbitrator from the returned lists and sets a hearing date, time, and place that is most convenient for all parties. If the parties cannot agree on an arbitrator from the submitted lists, the arbitration association can appoint one from its pool of arbitrators. Similarly, if the parties cannot agree on a hearing date, the arbitrator has the authority to fix the date, time, and place for the hearing.

Case preparation

Each party will be responsible for his or her own case presentation at the hearing. Parties may hire an attorney to represent them, or they may present their own cases. In either instance, case preparation is very important. Both parties should review the “*Agreement to Arbitrate*” form for an understanding of all the issues and as preparation for gathering relevant evidence (see page 7).

Expert witnesses

The CSLB will pay for one state-appointed expert witness per case.

An expert witness is a person who has extensive work experience and is competent to evaluate the work that is in dispute. If an expert witness is needed, the Contractors State License Board will hire one prior to referring the dispute to arbitration. This expert will become the state-appointed expert for the dispute.

When a state-appointed expert is used, both parties will receive a copy of the report of the expert witness shortly after the dispute is referred to the arbitration association. Either party may use the expert witness at the arbitration hearing. A party who wishes to use the testimony of the state-appointed expert at the hearing will be responsible for making arrangements with the expert witness to ensure his or her attendance at the hearing. **Arrangements to have a state-appointed expert testify should be made with the expert at least 15 days prior to the scheduled hearing.**

The consumer or the contractor may use an expert who is not appointed by the state.

A party who uses the services of an expert witness who is not appointed by the state will be responsible for arranging and paying for the services of the expert witness.

To locate an expert who is not appointed by the state, consult local sources, references, trade associations, building exchanges, or the yellow pages of the telephone book. The local office of the CSLB can also provide you with a list of expert witnesses who you can hire to assist in your dispute.

The hearing

Arbitration hearings are conducted in an informal setting and are designed to bring out the facts involved in a case.

The consumer presents his or her claims, evidence, and witnesses first, and then the contractor follows with his or her claims, evidence, and witnesses. Parties may be represented by legal counsel if they wish, but at their own expense. The rules that govern arbitration hearings under this program are found in Business and Professions Code Section 7085.5.

When a hearing is completed, the arbitrator has 30 calendar days in which to render a decision. The arbitrator has the authority to rule on the claims and to award money damages (see page 7).

The award

The arbitrator's award is final and binding on both parties. In other words, the contractor and the consumer must abide by the terms of an award. If either party does not comply, the other may petition the court to have the award confirmed and made a judgment of the court. The court can then enforce the award as its civil judgment.

Notice:

Civil Code Section 2855 states, "An arbitration award rendered against a principal alone shall not be, be deemed to be, or be utilized as, an award against his surety." The fact that a consumer receives a favorable award through the CSLB arbitration program does not mean that a surety company must pay the consumer from the proceeds of a contractor's license bond.

The procedure for enforcing awards can be found in the Code of Civil Procedure starting with section 1285. However, if court enforcement is necessary, an attorney should be consulted.

Consumers or contractors who wish to appeal an award in court must do so at their own expense. The CSLB **will not** represent parties in court. A consumer or contractor's refusal to accept the terms of an award will not preclude the CSLB from taking action after an award is granted.

The CSLB has the authority to discipline contractors who do not comply with an arbitration award. Most awards will specify a final date for compliance. If the award is against the contractor and the contractor does not comply within the time specified in the award, the consumer should notify the CSLB's regional office. The board will investigate the report of noncompliance, and, if appropriate, suspend the contractor's license. If the contractor complies with the arbitrator's award within one year, his or her license may be reinstated; otherwise, it will be revoked.

Advantages of arbitration . . .



. . . to both parties

- ◆ Arbitration is fast. It takes approximately 120 days to resolve a dispute.
- ◆ Arbitration provides an informal setting to resolve a dispute.
- ◆ Arbitrators hearing the cases are experts trained in hearing construction matters.
- ◆ Arbitration is binding.
- ◆ An award may be enforced in court.

. . . to the consumer

- ◆ If the contractor fails to comply with the award, the contractor's license may be suspended or revoked.

. . . to the contractor

- ◆ Under current complaint disclosure laws and policies, a complaint filed against a contractor will not be disclosed to the public unless the contractor fails to comply with the award and the license is suspended.
- ◆ A contractor's license will not be suspended or revoked on a complaint allegation referred to arbitration unless the contractor fails to comply with the arbitrator's award.

Points to remember about arbitration



- ◆ Arbitration is voluntary.
- ◆ The CSLB will pay for the hearing, the arbitrator, and the services of one board-appointed expert witness per complaint.
- ◆ Arbitration hearings are informal and held at a location near the parties.
- ◆ Only selected cases involving contractors with good records will be referred to arbitration.
- ◆ Both parties are responsible for preparing their cases and presenting them at the hearing.
- ◆ If parties want a record of the hearing, they will have to pay for a court reporter or make other arrangements to record the proceedings.
- ◆ If parties want to be represented by an attorney, they will have to hire one at their own expense.
- ◆ If parties need an expert witness to assist in the presentation of their cases, they may hire one at their own expense, or they may use the services of the CSLB-paid expert witness.
- ◆ In most cases, a party will not be able to file an independent civil suit in court regarding the same issues that have been decided through arbitration.
- ◆ Grounds for appealing an arbitration award are very limited.
- ◆ If a contractor files for bankruptcy, the CSLB or the arbitration association must be notified immediately.
- ◆ An arbitration decision rendered against a contractor does not necessarily result in a payout on the license bond.

Case presentation checklist

The following is a list of items that may be helpful in presenting evidence to the arbitrator at the hearing. This list is not intended to limit you from presenting other evidence as you deem necessary.

Contract

- ☐ Contract, plans and/or specifications, proposals, or any other evidence of an agreement with the other party that tends to prove the services, materials, etc., that were to be provided and for how much. (Note: Documents you have submitted to the CSLB are not forwarded to the arbitration association.)

Payment

- ☐ Checks, receipts, and ledgers that prove what has been paid, what is owed, and what services or materials were provided.

Performance

- ☐ Evidence from an expert witness that prove the services, materials, etc. were or were not provided in accordance with the contract, plans, and specifications or agreement. (If the state has paid for an expert witness, that expert's report will be sent to the arbitration association by the CSLB.)

Financial injury

- ☐ Evidence of the financial injury caused by deficient, defective or incomplete work. Financial injury may be established by presenting correction/completion cost estimates provided by an expert witness or by other contractors.
- ☐ Present the contract, the amount of money you have paid or value of services, materials, etc. you have received or provided.
- ☐ Amount owed on the contract and the amount of money that it will cost you to correct/complete the job, or the amount of money owed to you.



Contractors State License Board

P.O. Box 26000, Sacramento, CA 96826

Addresses and phone numbers for offices of the Contractors State License Board are found in the white pages of the telephone directory under State of California listings.

The CSLB also offers a toll-free telephone line with information about dealing with contractors, contractor license status, as well as phone numbers for district offices of the board.

The board's automated phone response number is 1-800-321-CSLB. For on-line information, see our website at www.cslb.ca.gov.

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